

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

FILED

APR -1 8:46

U.S. DISTRICT COURT

HOMER EUGENE IVEY,

Petitioner,

v.

CIVIL ACTION NO. 98-AR-1424-M

JOSEPH F. HOPPER, ALABAMA
PRISON COMMISSIONER, and
THE ATTORNEY GENERAL FOR THE
STATE OF ALABAMA,

Respondents.

[Signature]
ENTERED
APR 04 2000

MEMORANDUM OPINION

The petitioner challenges his aggravated stalking conviction received in the Circuit Court of Etowah County. On March 21, 2000, the magistrate judge assigned this matter entered a report and recommendation that the petition be denied. He found that the petitioner's conviction did not violate the double jeopardy clause and that his challenge to the aggravated stalking statute was procedurally barred and due to be denied on the merits. (Doc. 10).

On March 29, 2000, the petitioner filed his objections to the Magistrate Judge's Report and Recommendation. (Doc. 11). He asserts that the magistrate judge incorrectly concluded that the aggravated stalking prosecution in this case did not violate the double jeopardy clause when he found that the stalking prosecution (1) required proof of an additional fact which the criminal contempt charge did not; (2) required proof of repeated conduct that the contempt charge did not; and (3) did not require proof of wilfulness. The petitioner also objected to the finding that the constitutional challenge to the stalking statute is procedurally barred.

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The court has considered the entire file in this action, including the Magistrate Judge's Report and Recommendation and the objections of the petitioner, and has reached an independent conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved. The court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusion of the court. In accordance with the recommendation, this petition for a writ of habeas corpus is due to be denied and dismissed with prejudice. An appropriate order will be entered.

DONE, this 3rd day of April, 2000.

A handwritten signature in black ink, appearing to read "William M. Ackers, Jr.", written over a horizontal line.

WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE